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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,122	04/18/2001	Julie B. Brumbelow	19133.0006U3	7378

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127 PEACHTREE STREET N E
ATLANTA, GA 30303-1811

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,122

Applicant(s)

BRUMBELOW ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9, 10, 12-17, 19-21, 24-27, 29, 30, and 32-37 are rejected under 35 USC 102(b) as being anticipated by WO 96/22414 issued to Materniak et al.

Applicant claims a carpet comprising (a) yarn tufted into a primary backing with adhesive attaching said yarn tufts to said backing, (b) a woven secondary backing attached to the backside of said primary backing, and (c) a thermoplastic polymer layer adjacent to the other side of said secondary backing, wherein said polymer layer is attached to said secondary backing via melt bonding. Claims 2 and 3 limit the carpet to exhibiting reduced permeability to moisture and decreased coefficient of friction, as compared to carpet not having said polymer layer.

Claim 4 limits the yarn to being wool, cotton, nylon, acrylic, PTT, polyester, or polypropylene.

Claim 5 limits the adhesive to being latex, polyethylene, ethylene acrylic acid, carboxylated SBR, EVA, PVC, or polyurethane. Claim 6 limits the adhesive to not being a hot melt. Claims 7 and 9 limit the primary backing and the secondary backing, respectively, to being jute, wool, polypropylene, polyethylene, polyamide, polyester, or rayon. Claim 10 limits the polymer layer to being a single layer. Claim 12 limits the polymer layer to include styrene butadiene compounds, urethanes, PVC, or polyethylene. Claim 13 limits the polymer layer to include

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polyethylene or EVA. Claim 14 limits the polymer layer to further comprise an additive such as a flame retardant, antioxidant, antimicrobial, wetting agent, or frothing agent. Claims 15-17 limit the polymer layer to being present in an amount of less than or equal to 10, 4-10, and 0.5-4 oz/yd² respectively.

Independent claim 19 is drawn to a method of making a carpet comprising (a) tufting a yarn into a primary backing, (b) adhesively fixing said yarn to said backing, (c) providing a secondary backing, (d) attaching said secondary backing to said primary backing, and (e) applying a thermoplastic polymer layer to the secondary backing under conditions suitable to melt bond the polymer layer to said backing. The limitations of claims 20, 21, 24-27, 29, 30, and 32-37 are analogous to the limitations of claims 2, 3, 4-7, 9, 10, and 12-17, respectively.

Materniak discloses a carpet having a secondary backing which has a hydrophobic polymeric layer coated thereon so that said secondary backing is impervious to liquids (abstract). The pile yarns, which are tufted into a primary backing and fixed by an adhesive, are made of filaments of wool, polyolefin, polyamide, polyester, or acrylic (page 6, lines 1-10). The primary backing is preferably of polypropylene (page 4, lines 15-17). The adhesive is a latex of styrene-butadiene, EVA, or polyacrylate (page 6, lines 30-39). A secondary backing is then applied to the adhesively coated and tufted primary backing. Said secondary backing may be of jute or polypropylene (page 7, lines 14-25). The hydrophobic polymeric layer is then applied to the secondary backing (page 7, lines 35-38). Said polymeric layer is a film-forming latex, such as carboxylated SBR, EVA, or polyacrylates (page 5, lines 5-13). The layer may contain additives such as filler, thickeners, wetting agents, foaming agents, colorants, and antimicrobial agents

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(page 5, lines 23-32). The layer is present in an amount of 1-10 oz/yd² (page 12, line 33-page 13, line 2).

With respect to claims 3 and 21, Materniak is silent with respect to the decreased coefficient of friction on the backside of the carpet. However, it is asserted that the polymer coating on the backside of the secondary backing would inherently reduce the coefficient of friction due to the increase in smoothness of said backside.

With respect to the recitation in claim 1 that the polymer layer is attached via melt bonding, it is asserted that said limitation is a method limitation in an article claim. As such, it is not given patentable weight at this time since said method of attachment has not been evidenced to produce a materially different product. The burden is upon the applicant to prove otherwise.

Therefore, claims 1-7, 9, 10, 12-17, 19-21, 24-27, 29, 30, and 32-37 are rejected as being anticipated by the cited Materniak patent.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8, 18, 28, and 39 are rejected under 35 USC 103(a) as being unpatentable over the cited Materniak patent in view of US 5,540,968 issued to Higgins.

Claims 8 and 28 limit the carpet to further comprise an intermediate layer of fiberglass, foam, or metal mesh. Claims 18 and 39 limit the carpet to being a carpet tile.

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Materniak is silent with respect to the presence of an intermediate layer between the primary and secondary backings. However, said intermediate layers are well-known in the carpet art, in particular, in carpet tiles, as a reinforcement layer. For example, Higgins teaches an intermediate fiberglass layer for reinforcement of a carpet tile (cik, 1m kubes 29-31). Thus, it would have been obvious to one of ordinary skill in the art to employ an intermediate layer as is known in the art and evidenced by Higgins, in order to provide dimensional stability to the carpet and/or carpet tile. Similarly, it would have been obvious to one skilled in the art to employ the carpet of Materniak as a carpet tile in order to expand the number of applications of the invention. Therefore, claims 8, 18, 28, and 39 are rejected as being obvious over the cited prior art.

5. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Materniak patent in view of US 4, 844, 765 issued to Reith.

Claim 22 limits the layer to being applied via extrusion, while claim 23 limits it to being applied via film lamination.

Materniak is silent with respect to application via extrusion and film lamination. However, said methods of application are well-known in the carpet art. For example, Reith teaches extrusion and film or sheet lamination are alternate methods of application (col. 2, line 54-68 and col. 4, line 59-col. 5, line 23). Reith also teaches said film or sheet may contain two layers having different melt and viscosity properties. Thus, it would have been obvious to one of ordinary skill in the art to employ the alternate methods of application, as is known in the art and evidenced by Reith, in order to facilitate ease of application with a minimum adjustment to equipment. Therefore, claims 22 and 23 are rejected as being obvious over the cited prior art.

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6. Claims 11, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Materniak patent in view of US 5,240,530 issued to Fink and/or the cited Reith patent.

Claims 11 and 31 limit the polymer layer to being two or more layers. Claim 38 limits the polymer layer to being a first layer and a second layer, wherein said first layer has a lower melt temperature than the second layer.

Materniak is silent with respect to a dual layer polymeric backing. However, said dual layers are well-known in the art. For example, Fink teaches a coextruded polymeric backing (col. 6, lines 56-65). Additionally, as noted above Reith teaches a dual layer. Thus, it would have been obvious to one of ordinary skill in the art to employ a dual layer as is known in the art and evidenced by Fink and Reith, in order to provide improved adhesion of the laminated layers and improved dimensional stability of the carpet. Therefore, claims 11, 31, and 38 are rejected as being obvious over the cited prior art.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj
April 21, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER